

AMENDED IN ASSEMBLY JUNE 14, 2005

AMENDED IN ASSEMBLY JUNE 6, 2005

AMENDED IN SENATE MAY 2, 2005

AMENDED IN SENATE APRIL 21, 2005

SENATE BILL**No. 440**

Introduced by Senator Speier

February 17, 2005

An act to add Section 1798.21.5 to, and to add Title 1.81.23 (commencing with Section 1798.90.5) to Part 4 of Division 3 of, the Civil Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 440, as amended, Speier. Personal information.

(1) The Information Practices Act of 1977 regulates the collection and disclosure of personal information regarding individuals by state agencies, as specified.

~~This~~ *On and after July 1, 2006, this* bill would require a state agency, or any person contracting with a state agency, to encrypt all personal information, *as defined*, that is *owned by the state and* stored or transported on a portable ~~computer using industry standard encryption procedures~~ *computing or electronic storage device*.

(2) Existing law prescribes various prohibitions with regard to disclosures of personal information related to, among others, consumer credit reports, credit card transactions, driver's licenses, social security numbers, and direct marketing.

This bill would prohibit a business, as defined, from discriminating against or denying an otherwise qualified consumer a product or service, *or charging a higher price for that product or service*,

because the consumer has not provided the consent to disclose or share ~~personal covered~~ information, *as defined*, pertaining to him or her, or because the consumer has directed that the information not be disclosed or shared, ~~pursuant to state or federal law~~. The bill would except from that prohibition a business that cannot provide a product or service without provision of that ~~personal covered~~ information and certain ~~financial~~ institutions already subject to ~~similar specified federal provisions or regulations~~. The bill would provide that no liability is created with regard to the above, and that the measure is not intended to prohibit a business from offering incentives or discounts to elicit a specific response pertaining to the disclosure or sharing of ~~personal covered~~ information.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1798.21.5 is added to the Civil Code, to
2 read:
3 1798.21.5. ~~An~~ (a) *On and after July 1, 2006, an agency, or*
4 *any person contracting with an agency, shall encrypt all personal*
5 *information that is owned by the state and stored or transported*
6 *on a portable computer using industry standard encryption*
7 ~~procedures.~~ *computing or electronic storage device.*
8 (b) *For purposes of this section:*
9 (1) *“Personal information” means an individual’s first name*
10 *or first initial and his or her last name in combination with any*
11 *one or more of the following data elements:*
12 (A) *Social security number.*
13 (B) *Driver’s license number or California Identification Card*
14 *number.*
15 (C) *Account number or credit or debit card number, in*
16 *combination with any required security code, access code, or*
17 *password that would permit access to an individual’s financial*
18 *account.*
19 (D) *Medical information.*
20 (2) *“Medical information” means any individually identifiable*
21 *information, in electronic or physical form, regarding the*
22 *individual’s medical history or medical treatment or diagnosis by*
23 *a health care professional.*

SEC. 2. Title 1.81.23 (commencing with Section 1798.90.5) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.81.23. PERSONAL INFORMATION
DISCLOSURES TO BUSINESSES

1798.90.5. (a) A business *required by state or federal law to obtain a consumer's consent before disclosing or sharing covered information pertaining to the consumer or to provide the consumer with an opportunity to direct that the information not be shared or disclosed* shall not discriminate against or deny an otherwise qualified consumer a product or service *sold or leased by the business or charge a higher price for that product or service* because the consumer has not provided the business the consent to disclose or share ~~personal~~ *covered* information pertaining to him or her, or because the consumer has directed that the information not be disclosed or shared, ~~pursuant to state or federal law~~.

(b) Notwithstanding any other provision of law, nothing in this section shall prohibit a business from denying a consumer a product or service, *or from charging a consumer a higher price, if the business could not provide the product or service, or a lower price,* to the consumer without disclosure of the consumer's ~~personal~~ *covered* information, and the consumer has failed to provide consent to that disclosure or has directed that ~~personal~~ *covered* information pertaining to him or her not be disclosed or shared, ~~pursuant to state or federal law~~.

(c) A business shall not be liable for failing to offer products or services to a consumer solely because that consumer *or for charging a higher price for a product or service,* pursuant to state or federal law, has failed to provide the business the consent to disclose or share ~~personal~~ *covered* information pertaining to him or her or has directed that ~~personal~~ *covered* information not be disclosed or shared, and the business could not offer *or charge a lower price for* the product or service without the disclosure of the consumer's ~~personal~~ *covered* information.

(d) Nothing in this section is intended to prohibit a business from offering incentives or discounts to elicit a specific response to a choice pertaining to the disclosure or sharing of ~~personal~~ *covered* information granted in state or federal law.

(e) The requirements of this section shall not apply where a business is subject to, ~~and in compliance with,~~ paragraph (1) of subdivision (a) ~~and~~ or paragraph (4) of subdivision (b) of Section 4053 of the Financial Code, *or is a “covered entity” as defined in Section 160.103 of Title 45 of the Code of Federal Regulations of the Standards for Privacy of Individually Identifiable Health Information under the federal Health Insurance Portability and Accountability Act (42 U.S.C. Sec. 300gg et seq.) and is subject to Sections 164.508(b)(4) and 164.530(g) of Title 42 of the Code of Federal Regulations.*

(f) For purposes of this section:

(1) “Business” means a proprietorship, partnership, corporation, or any other form of commercial enterprise, doing business in California.

~~(2) “Personal information” has the same meaning as described in Section 1798.80.~~

(2) “Covered information” means the information pertaining to a consumer that state or federal law prohibits a business from sharing or disclosing before obtaining a consumer’s consent or before providing the consumer with an opportunity to direct that the information not be shared or disclosed.